

E-FILED 05-17-2010

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MEDIMMUNE, LLC,

No. C08-05590 JF (HRL)

Plaintiff,

**ORDER GRANTING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

v.

PDL BIOPHARMA, INC.

[Re: Docket No. 486]

Defendant.

Pursuant to Civil Local Rule 7-9(b), plaintiff MedImmune, LLC ("MedImmune") moves for reconsideration of this court's April 1, 2010 order (Docket No. 478) granting a motion for protective order filed by defendant PDL Biopharma, Inc. ("PDL") as to a subpoena MedImmune served on nonparty Genzyme Corp. ("Genzyme"). Specifically, MedImmune contends that the addition of PDL's amended counterclaims and the setting of a new case schedule as to those counterclaims presents "new material facts" warranting reconsideration under Civil Local Rule 7-9(b)(2). PDL opposes the motion. This court finds the matter suitable for determination without oral argument, and the May 25, 2010 hearing is vacated. See Civ. L.R. 7-1(b).

Upon consideration of the moving and responding papers, this court grants the motion. Although nothing changes the fact that the Genzyme subpoena was late, this court finds that the balance of equities has shifted in MedImmune's favor. The April 1, 2010 order was based on

1 the fact that the Genzyme subpoena was late and, under the then-existing schedule, PDL would
2 be prejudiced. The June 2010 trial has since been vacated. True, there has been no wholesale
3 reopening of discovery as to issues that have been in the case from the start. Nevertheless,
4 MedImmune convincingly argues that the discovery in question is important to its prior art
5 investigation. Moreover, this court is unpersuaded that PDL lacks sufficient time to complete
6 the follow-up discovery it says it may need to conduct. In sum, after weighing competing
7 legitimate interests and possible prejudice, this court concludes that MedImmune should be
8 permitted to proceed with the Genzyme subpoena. The parties are admonished, however, to
9 proceed promptly so that the Genzyme-related discovery may be accomplished under existing
10 deadlines set by Judge Fogel.

11 SO ORDERED.

12 Dated: May 17, 2010



HOWARD E. LLOYD
UNITED STATES MAGISTRATE JUDGE

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